

108TH CONGRESS  
1ST SESSION

# S. 160

To amend the Internal Revenue Code of 1986 to allow the expensing of broadband Internet access expenditures, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 14, 2003

Mr. BURNS (for himself, Mr. BAUCUS, Mr. HATCH, Mr. BUNNING, Mr. KENNEDY, Mrs. CLINTON, Mr. SCHUMER, and Mr. GRAHAM of South Carolina) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to allow the expensing of broadband Internet access expenditures, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. EXPENSING OF BROADBAND INTERNET ACCESS**  
4 **EXPENDITURES.**

5 (a) IN GENERAL.—Part VI of subchapter B of chap-  
6 ter 1 of the Internal Revenue Code of 1986 (relating to  
7 itemized deductions for individuals and corporations) is  
8 amended by inserting after section 190 the following new  
9 section:

1 **“SEC. 191. BROADBAND EXPENDITURES.**

2 “(a) TREATMENT OF EXPENDITURES.—

3 “(1) IN GENERAL.—A taxpayer may elect to  
4 treat any qualified broadband expenditure which is  
5 paid or incurred by the taxpayer as an expense  
6 which is not chargeable to capital account. Any ex-  
7 penditure which is so treated shall be allowed as a  
8 deduction.

9 “(2) ELECTION.—An election under paragraph  
10 (1) shall be made at such time and in such manner  
11 as the Secretary may prescribe by regulation.

12 “(b) QUALIFIED BROADBAND EXPENDITURES.—For  
13 purposes of this section—

14 “(1) IN GENERAL.—The term ‘qualified  
15 broadband expenditure’ means, with respect to any  
16 taxable year, any direct or indirect costs incurred  
17 and properly taken into account with respect to the  
18 purchase or installation of qualified equipment (in-  
19 cluding any upgrades thereto), together with any di-  
20 rect or indirect costs incurred and properly taken  
21 into account with respect to the connection of such  
22 qualified equipment to any qualified subscriber, but  
23 only if such costs are incurred after December 31,  
24 2002, and before January 1, 2008.

25 “(2) CERTAIN SATELLITE EXPENDITURES EX-  
26 CLUDED.—Such term shall not include any costs in-

1       curred with respect to the launching of any satellite  
2       equipment.

3               “(3) LEASED EQUIPMENT.—Such term shall in-  
4       clude so much of the purchase price paid by the les-  
5       sor of equipment subject to a lease described in sub-  
6       section (c)(2)(B) as is attributable to expenditures  
7       incurred by the lessee which would otherwise be de-  
8       scribed in paragraph (1).

9               “(4) LIMITATION WITH REGARD TO CURRENT  
10       GENERATION BROADBAND SERVICES.—Only 50 per-  
11       cent of the amounts taken into account under para-  
12       graph (1) with respect to qualified equipment  
13       through which current generation broadband serv-  
14       ices are provided shall be treated as qualified  
15       broadband expenditures.

16       “(c) WHEN EXPENDITURES TAKEN INTO AC-  
17       COUNT.—For purposes of this section—

18               “(1) IN GENERAL.—Qualified broadband ex-  
19       penditures with respect to qualified equipment shall  
20       be taken into account with respect to the first tax-  
21       able year in which—

22               “(A) current generation broadband services  
23       are provided through such equipment to quali-  
24       fied subscribers, or

1 “(B) next generation broadband services  
2 are provided through such equipment to quali-  
3 fied subscribers.

4 “(2) LIMITATION.—

5 “(A) IN GENERAL.—Qualified expenditures  
6 shall be taken into account under paragraph (1)  
7 only with respect to qualified equipment—

8 “(i) the original use of which com-  
9 mences with the taxpayer, and

10 “(ii) which is placed in service,  
11 after December 31, 2002.

12 “(B) SALE-LEASEBACKS.—For purposes of  
13 subparagraph (A), if property—

14 “(i) is originally placed in service  
15 after December 31, 2002, by any person,  
16 and

17 “(ii) sold and leased back by such per-  
18 son within 3 months after the date such  
19 property was originally placed in service,  
20 such property shall be treated as originally  
21 placed in service not earlier than the date on  
22 which such property is used under the leaseback  
23 referred to in clause (ii).

24 “(d) SPECIAL ALLOCATION RULES.—

1           “(1) CURRENT GENERATION BROADBAND SERV-  
2           ICES.—For purposes of determining the amount of  
3           qualified broadband expenditures under subsection  
4           (a)(1) with respect to qualified equipment through  
5           which current generation broadband services are  
6           provided, if the qualified equipment is capable of  
7           serving both qualified subscribers and other sub-  
8           scribers, the qualified broadband expenditures shall  
9           be multiplied by a fraction—

10                 “(A) the numerator of which is the sum of  
11                 the number of potential qualified subscribers  
12                 within the rural areas and the underserved  
13                 areas which the equipment is capable of serving  
14                 with current generation broadband services, and

15                 “(B) the denominator of which is the total  
16                 potential subscriber population of the area  
17                 which the equipment is capable of serving with  
18                 current generation broadband services.

19           “(2) NEXT GENERATION BROADBAND SERV-  
20           ICES.—For purposes of determining the amount of  
21           qualified broadband expenditures under subsection  
22           (a)(1) with respect to qualified equipment through  
23           which next generation broadband services are pro-  
24           vided, if the qualified equipment is capable of serv-  
25           ing both qualified subscribers and other subscribers,

1 the qualified expenditures shall be multiplied by a  
 2 fraction—

3 “(A) the numerator of which is the sum  
 4 of—

5 “(i) the number of potential qualified  
 6 subscribers within the rural areas and un-  
 7 derserved areas, plus

8 “(ii) the number of potential qualified  
 9 subscribers within the area consisting only  
 10 of residential subscribers not described in  
 11 clause (i),

12 which the equipment is capable of serving with  
 13 next generation broadband services, and

14 “(B) the denominator of which is the total  
 15 potential subscriber population of the area  
 16 which the equipment is capable of serving with  
 17 next generation broadband services.

18 “(e) DEFINITIONS.—For purposes of this section—

19 “(1) ANTENNA.—The term ‘antenna’ means  
 20 any device used to transmit or receive signals  
 21 through the electromagnetic spectrum, including sat-  
 22 ellite equipment.

23 “(2) CABLE OPERATOR.—The term ‘cable oper-  
 24 ator’ has the meaning given such term by section

1       602(5) of the Communications Act of 1934 (47  
2       U.S.C. 522(5)).

3               “(3) COMMERCIAL MOBILE SERVICE CAR-  
4       RIER.—The term ‘commercial mobile service carrier’  
5       means any person authorized to provide commercial  
6       mobile radio service as defined in section 20.3 of  
7       title 47, Code of Federal Regulations.

8               “(4) CURRENT GENERATION BROADBAND SERV-  
9       ICE.—The term ‘current generation broadband serv-  
10      ice’ means the transmission of signals at a rate of  
11      at least 1,000,000 bits per second to the subscriber  
12      and at least 128,000 bits per second from the sub-  
13      scriber.

14              “(5) MULTIPLEXING OR DEMULTIPLEXING.—  
15      The term ‘multiplexing’ means the transmission of 2  
16      or more signals over a single channel, and the term  
17      ‘demultiplexing’ means the separation of 2 or more  
18      signals previously combined by compatible multi-  
19      plexing equipment.

20              “(6) NEXT GENERATION BROADBAND SERV-  
21      ICE.—The term ‘next generation broadband service’  
22      means the transmission of signals at a rate of at  
23      least 22,000,000 bits per second to the subscriber  
24      and at least 5,000,000 bits per second from the sub-  
25      scriber.

1           “(7) NONRESIDENTIAL SUBSCRIBER.—The  
 2           term ‘nonresidential subscriber’ means any person  
 3           who purchases broadband services which are deliv-  
 4           ered to the permanent place of business of such per-  
 5           son.

6           “(8) OPEN VIDEO SYSTEM OPERATOR.—The  
 7           term ‘open video system operator’ means any person  
 8           authorized to provide service under section 653 of  
 9           the Communications Act of 1934 (47 U.S.C. 573).

10          “(9) OTHER WIRELESS CARRIER.—The term  
 11          ‘other wireless carrier’ means any person (other than  
 12          a telecommunications carrier, commercial mobile  
 13          service carrier, cable operator, open video system op-  
 14          erator, or satellite carrier) providing current genera-  
 15          tion broadband services or next generation  
 16          broadband service to subscribers through the radio  
 17          transmission of energy.

18          “(10) PACKET SWITCHING.—The term ‘packet  
 19          switching’ means controlling or routing the path of  
 20          any digitized transmission signal which is assembled  
 21          into packets or cells.

22          “(11) PROVIDER.—The term ‘provider’ means,  
 23          with respect to any qualified equipment—

24                 “(A) a cable operator,

25                 “(B) a commercial mobile service carrier,



1 “(C) an open video system operator,

2 “(D) a satellite carrier,

3 “(E) a telecommunications carrier, or

4 “(F) any other wireless carrier,

5 providing current generation broadband services or  
6 next generation broadband services to subscribers  
7 through such qualified equipment.

8 “(12) PROVISION OF SERVICES.—A provider  
9 shall be treated as providing services to 1 or more  
10 subscribers if—

11 “(A) such a subscriber has been passed by  
12 the provider’s equipment and can be connected  
13 to such equipment for a standard connection  
14 fee,

15 “(B) the provider is physically able to de-  
16 liver current generation broadband services or  
17 next generation broadband services, as applica-  
18 ble, to such a subscriber without making more  
19 than an insignificant investment with respect to  
20 such subscriber,

21 “(C) the provider has made reasonable ef-  
22 forts to make such subscribers aware of the  
23 availability of such services,

24 “(D) such services have been purchased by  
25 1 or more such subscribers, and

1           “(E) such services are made available to  
 2           such subscribers at average prices comparable  
 3           to those at which the provider makes available  
 4           similar services in any areas in which the pro-  
 5           vider makes available such services.

6           “(13) QUALIFIED EQUIPMENT.—

7           “(A) IN GENERAL.—The term ‘qualified  
 8           equipment’ means equipment which provides  
 9           current generation broadband services or next  
 10          generation broadband services—

11           “(i) at least a majority of the time  
 12           during periods of maximum demand to  
 13           each subscriber who is utilizing such serv-  
 14           ices, and

15           “(ii) in a manner substantially the  
 16           same as such services are provided by the  
 17           provider to subscribers through equipment  
 18           with respect to which no deduction is al-  
 19           lowed under subsection (a)(1).

20           “(B) ONLY CERTAIN INVESTMENT TAKEN  
 21           INTO ACCOUNT.—Except as provided in sub-  
 22           paragraph (C) or (D), equipment shall be taken  
 23           into account under subparagraph (A) only to  
 24           the extent it—

1 “(i) extends from the last point of  
2 switching to the outside of the unit, build-  
3 ing, dwelling, or office owned or leased by  
4 a subscriber in the case of a telecommuni-  
5 cations carrier,

6 “(ii) extends from the customer side  
7 of the mobile telephone switching office to  
8 a transmission/receive antenna (including  
9 such antenna) owned or leased by a sub-  
10 scribe in the case of a commercial mobile  
11 service carrier,

12 “(iii) extends from the customer side  
13 of the headend to the outside of the unit,  
14 building, dwelling, or office owned or  
15 leased by a subscriber in the case of a  
16 cable operator or open video system oper-  
17 ator, or

18 “(iv) extends from a transmission/re-  
19 ceive antenna (including such antenna)  
20 which transmits and receives signals to or  
21 from multiple subscribers, to a trans-  
22 mission/receive antenna (including such  
23 antenna) on the outside of the unit, build-  
24 ing, dwelling, or office owned or leased by  
25 a subscriber in the case of a satellite car-

rier or other wireless carrier, unless such other wireless carrier is also a telecommunications carrier.

“(C) PACKET SWITCHING EQUIPMENT.—

Packet switching equipment, regardless of location, shall be taken into account under subparagraph (A) only if it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of packet switching for current generation broadband services or next generation broadband services, but only if such packet switching is the last in a series of such functions performed in the transmission of a signal to a subscriber or the first in a series of such functions performed in the transmission of a signal from a subscriber.

“(D) MULTIPLEXING AND

DEMULTIPLEXING EQUIPMENT.—Multiplexing and demultiplexing equipment shall be taken into account under subparagraph (A) only to the extent it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of multiplexing and demultiplexing packets or cells

1 of data and making associated application  
2 adaptions, but only if such multiplexing or  
3 demultiplexing equipment is located between  
4 packet switching equipment described in sub-  
5 paragraph (C) and the subscriber's premises.

6 “(14) QUALIFIED SUBSCRIBER.—The term  
7 ‘qualified subscriber’ means—

8 “(A) with respect to the provision of cur-  
9 rent generation broadband services—

10 “(i) any nonresidential subscriber  
11 maintaining a permanent place of business  
12 in a rural area or underserved area, or

13 “(ii) any residential subscriber resid-  
14 ing in a dwelling located in a rural area or  
15 underserved area which is not a saturated  
16 market, and

17 “(B) with respect to the provision of next  
18 generation broadband services—

19 “(i) any nonresidential subscriber  
20 maintaining a permanent place of business  
21 in a rural area or underserved area, or

22 “(ii) any residential subscriber.

23 “(15) RESIDENTIAL SUBSCRIBER.—The term  
24 ‘residential subscriber’ means any individual who

1 purchases broadband services which are delivered to  
2 such individual's dwelling.

3 “(16) RURAL AREA.—The term ‘rural area’  
4 means any census tract which—

5 “(A) is not within 10 miles of any incor-  
6 porated or census designated place containing  
7 more than 25,000 people, and

8 “(B) is not within a county or county  
9 equivalent which has an overall population den-  
10 sity of more than 500 people per square mile of  
11 land.

12 “(17) RURAL SUBSCRIBER.—The term ‘rural  
13 subscriber’ means any residential subscriber residing  
14 in a dwelling located in a rural area or nonresiden-  
15 tial subscriber maintaining a permanent place of  
16 business located in a rural area.

17 “(18) SATELLITE CARRIER.—The term ‘sat-  
18 ellite carrier’ means any person using the facilities  
19 of a satellite or satellite service licensed by the Fed-  
20 eral Communications Commission and operating in  
21 the Fixed-Satellite Service under part 25 of title 47  
22 of the Code of Federal Regulations or the Direct  
23 Broadcast Satellite Service under part 100 of title  
24 47 of such Code to establish and operate a channel  
25 of communications for distribution of signals, and

1       owning or leasing a capacity or service on a satellite  
 2       in order to provide such point-to-multipoint distribu-  
 3       tion.

4               “(19) SATURATED MARKET.—The term ‘satu-  
 5       rated market’ means any census tract in which, as  
 6       of the date of the enactment of this section—

7               “(A) current generation broadband services  
 8       have been provided by a single provider to 85  
 9       percent or more of the total number of potential  
 10      residential subscribers residing in dwellings lo-  
 11      cated within such census tract, and

12              “(B) such services can be utilized—

13              “(i) at least a majority of the time  
 14      during periods of maximum demand by  
 15      each such subscriber who is utilizing such  
 16      services, and

17              “(ii) in a manner substantially the  
 18      same as such services are provided by the  
 19      provider to subscribers through equipment  
 20      with respect to which no deduction is al-  
 21      lowed under subsection (a)(1).

22              “(20) SUBSCRIBER.—The term ‘subscriber’  
 23      means any person who purchases current generation  
 24      broadband services or next generation broadband  
 25      services.

1           “(21) TELECOMMUNICATIONS CARRIER.—The  
 2           term ‘telecommunications carrier’ has the meaning  
 3           given such term by section 3(44) of the Communica-  
 4           tions Act of 1934 (47 U.S.C. 153(44)), but—

5                   “(A) includes all members of an affiliated  
 6                   group of which a telecommunications carrier is  
 7                   a member, and

8                   “(B) does not include a commercial mobile  
 9                   service carrier.

10           “(22) TOTAL POTENTIAL SUBSCRIBER POPU-  
 11           LATION.—The term ‘total potential subscriber popu-  
 12           lation’ means, with respect to any area and based on  
 13           the most recent census data, the total number of po-  
 14           tential residential subscribers residing in dwellings  
 15           located in such area and potential nonresidential  
 16           subscribers maintaining permanent places of busi-  
 17           ness located in such area.

18           “(23) UNDERSERVED AREA.—The term ‘under-  
 19           served area’ means any census tract which is located  
 20           in—

21                   “(A) an empowerment zone or enterprise  
 22                   community designated under section 1391,

23                   “(B) the District of Columbia Enterprise  
 24                   Zone established under section 1400,



1           “(C) a renewal community designated  
2           under section 1400E, or

3           “(D) a low-income community designated  
4           under section 45D.

5           “(24) UNDERSERVED SUBSCRIBER.—The term  
6           ‘underserved subscriber’ means any residential sub-  
7           scriber residing in a dwelling located in an under-  
8           served area or nonresidential subscriber maintaining  
9           a permanent place of business located in an under-  
10          served area.

11          “(f) SPECIAL RULES.—

12           “(1) PROPERTY USED OUTSIDE THE UNITED  
13           STATES, ETC., NOT QUALIFIED.—No expenditures  
14           shall be taken into account under subsection (a)(1)  
15           with respect to the portion of the cost of any prop-  
16           erty referred to in section 50(b) or with respect to  
17           the portion of the cost of any property taken into ac-  
18           count under section 179.

19           “(2) BASIS REDUCTION.—

20           “(A) IN GENERAL.—For purposes of this  
21           title, the basis of any property shall be reduced  
22           by the portion of the cost of such property  
23           taken into account under subsection (a)(1).

24           “(B) ORDINARY INCOME RECAPTURE.—  
25           For purposes of section 1245, the amount of

1           the deduction allowable under subsection (a)(1)  
 2           with respect to any property which is of a char-  
 3           acter subject to the allowance for depreciation  
 4           shall be treated as a deduction allowed for de-  
 5           preciation under section 167.

6           “(3) COORDINATION WITH SECTION 38.—No  
 7           credit shall be allowed under section 38 with respect  
 8           to any amount for which a deduction is allowed  
 9           under subsection (a)(1).”.

10          (b) SPECIAL RULE FOR MUTUAL OR COOPERATIVE  
 11   TELEPHONE COMPANIES.—Section 501(c)(12)(B) of the  
 12   Internal Revenue Code of 1986 (relating to list of exempt  
 13   organizations) is amended by striking “or” at the end of  
 14   clause (iii), by striking the period at the end of clause (iv)  
 15   and inserting “, or”, and by adding at the end the fol-  
 16   lowing:

17                           “(v) from the sale of property subject  
 18                           to a lease described in section  
 19                           191(c)(2)(B), but only to the extent such  
 20                           income does not in any year exceed an  
 21                           amount equal to the qualified broadband  
 22                           expenditures which would be taken into ac-  
 23                           count under section 191 for such year if  
 24                           the mutual or cooperative telephone com-  
 25                           pany was not exempt from taxation and

1           was treated as the owner of the property  
2           subject to such lease.”.

3       (c) CONFORMING AMENDMENTS.—

4           (1) Section 263(a)(1) of the Internal Revenue  
5       Code of 1986 (relating to capital expenditures) is  
6       amended by striking “or” at the end of subpara-  
7       graph (G), by striking the period at the end of sub-  
8       paragraph (H) and inserting “, or”, and by adding  
9       at the end the following new subparagraph:

10           “(I) expenditures for which a deduction is  
11           allowed under section 191.”.

12           (2) Section 1016(a) of such Code is amended  
13       by striking “and” at the end of paragraph (27), by  
14       striking the period at the end of paragraph (28) and  
15       inserting “, and”, and by adding at the end the fol-  
16       lowing new paragraph:

17           “(29) to the extent provided in section  
18       191(f)(2).”.

19           (3) The table of sections for part VI of sub-  
20       chapter A of chapter 1 of such Code is amended by  
21       inserting after the item relating to section 190 the  
22       following new item:

“Sec. 191. Broadband expenditures.”.

23       (d) DESIGNATION OF CENSUS TRACTS.—

24           (1) IN GENERAL.—The Secretary of the Treas-  
25       ury shall, not later than 90 days after the date of

1 the enactment of this Act, designate and publish  
2 those census tracts meeting the criteria described in  
3 paragraphs (16), (22), and (23) of section 191(e)  
4 of the Internal Revenue Code of 1986 (as added by  
5 this section). In making such designations, the Sec-  
6 retary of the Treasury shall consult with such other  
7 departments and agencies as the Secretary deter-  
8 mines appropriate.

9 (2) SATURATED MARKET.—

10 (A) IN GENERAL.—For purposes of desig-  
11 nating and publishing those census tracts meet-  
12 ing the criteria described in subsection (e)(19)  
13 of such section 191—

14 (i) the Secretary of the Treasury shall  
15 prescribe not later than 30 days after the  
16 date of the enactment of this Act the form  
17 upon which any provider which takes the  
18 position that it meets such criteria with re-  
19 spect to any census tract shall submit a  
20 list of such census tracts (and any other  
21 information required by the Secretary) not  
22 later than 60 days after the date of the  
23 publication of such form, and

24 (ii) the Secretary of the Treasury  
25 shall publish an aggregate list of such cen-

1           sus tracts and the applicable providers not  
 2           later than 30 days after the last date such  
 3           submissions are allowed under clause (i).

4           (B) NO SUBSEQUENT LISTS REQUIRED.—  
 5           The Secretary of the Treasury shall not be re-  
 6           quired to publish any list of census tracts meet-  
 7           ing such criteria subsequent to the list de-  
 8           scribed in subparagraph (A)(ii).

9           (C) AUTHORITY TO DISREGARD FALSE  
 10          SUBMISSIONS.—In addition to imposing any  
 11          other applicable penalties, the Secretary of the  
 12          Treasury shall have the discretion to disregard  
 13          any form described in subparagraph (A)(i) on  
 14          which a provider knowingly submitted false in-  
 15          formation.

16       (e) OTHER REGULATORY MATTERS.—

17           (1) PROHIBITION.—No Federal or State agency  
 18          or instrumentality shall adopt regulations or rate-  
 19          making procedures that would have the effect of  
 20          confiscating any deduction or portion thereof allowed  
 21          under section 191 of the Internal Revenue Code of  
 22          1986 (as added by this section) or otherwise sub-  
 23          verting the purpose of this section.

24           (2) TREASURY REGULATORY AUTHORITY.—It is  
 25          the intent of Congress in providing the election to

1 deduct qualified broadband expenditures under sec-  
2 tion 191 of the Internal Revenue Code of 1986 (as  
3 added by this section) to provide incentives for the  
4 purchase, installation, and connection of equipment  
5 and facilities offering expanded broadband access to  
6 the Internet for users in certain low income and  
7 rural areas of the United States, as well as to resi-  
8 dential users nationwide, in a manner that main-  
9 tains competitive neutrality among the various class-  
10 es of providers of broadband services. Accordingly,  
11 the Secretary of the Treasury shall prescribe such  
12 regulations as may be necessary or appropriate to  
13 carry out the purposes of section 191 of such Code,  
14 including—

15 (A) regulations to determine how and when  
16 a taxpayer that incurs qualified broadband ex-  
17 penditures satisfies the requirements of section  
18 191 of such Code to provide broadband serv-  
19 ices, and

20 (B) regulations describing the information,  
21 records, and data taxpayers are required to pro-  
22 vide the Secretary to substantiate compliance  
23 with the requirements of section 191 of such  
24 Code.

1       (f) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to expenditures incurred after De-  
3 cember 31, 2002.

○